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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
SHAKERTOWN CORPORATION,)
d.b.a. PORT ANGELES SHINGLE,)
Appellant,)
v.)
OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 1027

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This is an appeal of a \$200.00 civil penalty assessed against appellant, Shakertown Corporation d.b.a. Port Angeles Shingle, for allegedly exceeding visible emission limits in violation of Section 10.01 of Regulation I of the respondent, Olympic Air Pollution Control Authority, (OAPCA). Hearing was held before the Pollution Control Hearings Board, Art Brown, Chairman, Chris Smith, and W. A. Gissberg, convened at Lacey, Washington, on October 5, 1976. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing. Appellant was represented by its employee, Mr. Joe Hendrickson,

1 Manager, U. S. Shingle and Shake Products and Industrial Relations.
2 Respondent appeared by and through its attorney, Mr. Fred D. Gentry.

3 Witnesses were sworn and testified. Exhibits were admitted. From
4 testimony heard and exhibits examined, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
9 a certified copy of its Regulation I containing respondent's regulations
10 and amendments thereto.

11 II

12 The source of this alleged air pollution is a wigwam-type waste
13 wood burner. At all times relevant to this appeal the appellant was
14 the owner of and had control over the waste wood burner concerned.
15 Said waste wood burner is located off Highway 101 near Port Angeles,
16 Washington.

17 III

18 The wigwam burner began operation in March, 1973, at which time
19 it was inspected by respondent OAPCA. The inspection showed that it was
20 capable of staying within the limitation of Number One Ringelmann which
21 governed emission from new sources then and governs all sources now.

22 IV

23 A prior Notice of Penalty was served upon the appellant for a prior
24 emission from the same burner. That emission occurred on March 16, 1976,
25 and was in excess of Number Three Ringelmann for a duration of 85 minutes.
26 The penalty assessed was \$100.00, conditionally suspended by OAPCA. Th

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 was no appeal of that penalty to this Hearings Board.

2 V

3 Subsequent to that March penalty, but before the April penalty which
4 is the subject of this appeal, appellant notified the burner manufacturer
5 of its emission problems. The manufacturer, Industrial Construction
6 Company of Eugene, Oregon, advised that a hotter fire was necessary to
7 reduce emissions.

8 VI

9 On April 22, 1976, an OAPCA inspector observed emissions from the
10 burner in excess of Number Three Ringelmann for a period of 80 minutes.
11 A Notice of Violation was served upon appellant at the burner site. A
12 Notice of Civil Penalty Assessment dated May 3, 1976, was sent by mail
13 and received by appellant on May 5, 1976. The latter imposed a penalty
14 of \$100.00 for the April violation and brought down the \$100.00
15 suspended penalty for the March violation, for a total of \$200.00. From
16 this the appellant appeals.

17 VII

18 Any Conclusion of Law hereinafter recited which should be deemed a
19 Finding of Fact is hereby adopted as such.

20 From these Findings the Pollution Control Hearings Board comes to
21 these

22 CONCLUSIONS OF LAW

23 I

24 The Hearings Board has jurisdiction over the subject matter and
25 parties to this appeal.

26

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 3

1 II

2 The appellant failed to appeal the prior Notice of Penalty Assess-
3 ment pertaining to emissions of March 16, 1976. The suspended March
4 penalty will therefore be imposed if we affirm the April violation
5 before us.

6 III

7 We conclude that the allegations contained in the Notice of Penalty
8 Assessment pertaining to April 22, 1976, are true, and that appellant has
9 violated Section 10.01 of OAPCA's Regulation I. The appellant freely
10 admitted the truth of the allegations at hearing, and offered no
11 evidence in opposition to the testimony of the OAPCA inspector who
12 personally observed the emissions.

13 IV

14 We conclude that the amount of penalty is reasonable in the
15 circumstances. While the appellant was advised before the April
16 violation that a hotter fire was necessary to prevent illegal emissions,
17 that advice, whether unsound or unfollowed, failed to prevent the April
18 violation. If a hotter fire cannot prevent illegal emissions, the
19 penalty is appropriate since there is every prospect that illegal
20 emissions from that source will continue. If a hotter fire can prevent
21 illegal emissions, the April violation itself is evidence that the
22 appellant declined to use a hotter fire although that technique was
23 recommended by the burner manufacturer.

24 V

25 Any Finding of Fact which should be deemed a Conclusion of Law is
26 hereby adopted as such.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

ORDER

The violation and \$200.00 civil penalty imposed by the Notice of Civil Penalty Assessment here appealed from, are each hereby affirmed.

DATED this 20th day of October, 1976.

POLLUTION CONTROL HEARINGS BOARD

Art Brown

ART BROWN, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

Chris Smith

CHRIS SMITH, Member

FINDINGS OF FACT,
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